State of Utah

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R307-405	Time filed:	

1. Agency: Environmental Quality/Air Quality
   Room no.:
   Building:
   Street address 1: 150 N 1950 W
   Street address 2:
   City,state,zip: SALT LAKE CITY, UT 84116-3085
   Mailing address 1: PO BOX 144820
   Mailing address 2:
   City,state,zip: SALT LAKE CITY, UT 84114-4820

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Jan Miller	801-536-4042	801-536-0085	janmiller@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

2. **Title of rule or section (catchline):**
Permits: Major Sources in Attainment or Unclassified Areas (PSD).

3. **A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:**
19-2-104(3)(q) states that the Air Quality Board may meet the requirements of federal laws. The Clean Air Act, Part C (42 U.S.C. 7470 ff), Prevention of Significant Deterioration of Air Quality, is implemented by 40 CFR 51.166, which requires states to implement these regulations when issuing permits to sources of air pollution. R307-405, last amended by DAR #28322, published December 1, 2005, implements the federal requirements.

4. **A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:** See separate email file.

5. **A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:**
Without R307-405, the provisions of 40 CFR 51.166 would be administered by the Environmental Protection Agency. The Air Quality Board has chosen to administer federal programs itself rather than leaving them to EPA.

6. **Indexing information - keywords (maximum of four, in lower case):**
PSD, Class I area, air pollution

7. **Attach an RTF document containing the text of this rule change (filename):**
There is currently a document associated with this filing. Rule Text

To the agency: Information requested on this form is required by Section 63-46a-9. Incomplete forms will be returned to the agency for completion, possibly delaying the

effective date.

AGENCY AUTHORIZATION

Agency head or designee, and title:	M. Cheryl Heying Planning Branch Manager	**Date** (mm/dd/yyyy):	6/1/2006

Non Printable

M. Cheryl Heying 5-25-06

4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

No comments have been received outside the comment period when R307-405 has been amended. R307-405 was amended in DAR #28322, published December 1, 2005. Following are comments received and responses made during that amendment process. 1) COMMENT: The New Source Review (NSR) Reform rule will allow many more modifications at existing major sources than under the current NSR rules. RESPONSE: DAQ has evaluated the air quality impact of the NSR Reform provisions in Utah. The major source permitting requirements in attainment areas (the Prevention of Significant Deterioration, or PSD, permitting program) are only a portion of Utah's overall permitting requirements, and the effect of the NSR Reform provisions must be viewed in the context of the entire program. A review of the PSD permits that have been issued in recent years shows that all of these permits were either for new sources that would not be affected by the rule, or were for big modifications that would be subject to the PSD program under both the new and the old rules. DAQ has not identified any past PSD projects that would not have been subject to PSD under the new NSR reform provisions. If a modification that would have required PSD review is no longer subject to those provisions because of the changes to applicability under NSR Reform, DAQ does not believe that emission increases will occur. Utah requires all sources, both major and minor, to apply best available control technology (BACT) when an emission unit is modified. Therefore, even when a modification is not considered a major modification, the source must still apply BACT. The net effect is that emissions will not change if a modification is reviewed under the minor source program rather than the PSD program. DAQ analyzed 14 different scenarios to determine how a modification would be affected by the change in applicability provisions. The scenarios were chosen to focus on the types of changes that would no longer be subject to the PSD rule. The analysis looked at whether a modification would be subject to the old PSD provisions, new PSD provisions, minor source permitting program, and minor source modeling requirements. In 12 of the 14 scenarios, BACT would be required for the modification even if the modification no longer met the applicability provisions of the PSD rule. The two exceptions occurred for modifications where emissions from the source were decreasing. Under these scenarios, a modification that would formerly have been reviewed under the PSD program could be constructed without the requirement to apply BACT. This is the type of scenario where the PSD rule is currently creating a disincentive for sources to reduce emissions. DAQ has had inquiries from a number of sources that wanted to install pollution control equipment or switch to a cleaner fuel, but chose not to continue with the project because the permitting requirements were too much of a disincentive. DAQ believes that under these two scenarios it is more likely that the applicability changes will encourage sources to reduce emissions, resulting in an overall emission decrease due to the adoption of the applicability provisions. 2) COMMENT: The Utah state permitting rule will not ensure that emissions from existing major sources in nonattainment areas will not increase. The Utah permitting rule does not require lowest achievable emission rate (LAER) control technology or emissions offsetting for minor modifications in non-attainment areas. RESPONSE: The current rule revision is focused on the major source permitting requirements in attainment areas (PSD permitting program). The nonattainment area requirements in R307-403 have not been changed. DAQ will evaluate the effects of NSR reform in nonattainment areas in a future rulemaking. 3) COMMENT: NSR Reform rule will benefit older, grandfathered sources, allowing upgrades and life extension projects without either the installation of pollution control equipment or evaluation of air quality impacts. RESPONSE: As described in the response to comment #1, the effects of NSR Reform must be viewed within the context of Utah's entire permitting program. Utah's minor source permitting program, in combination with SIP requirements in nonattainment areas, has been very effective over the last 30 years and there are very few grandfathered sources left in the state. In addition, many sources that used to qualify as major sources are now considered minor sources due to emission reductions. DAQ reviewed the

emission inventory, operating permits, and approval orders to estimate the number of sources in the state that are currently considered major sources under the PSD permitting program. The review focused on the attainment areas of the state because the nonattainment area provisions are not affected by the current rule change. DAQ identified 29 potential major sources. Of these sources, 7 have undergone PSD review and 14 have been regulated by Utah's minor source program, SIPs, MACT standards or other requirements that have required emission limitations and emission controls. There were only 8 sources where the major emission units were grandfathered. One of these sources was a small natural-gas burning power plant, and the other 7 were natural gas compressor stations in the Uintah Basin. These sources are all relatively small, they are burning a clean fuel, and if the compressor engines were to be modified in the future it would not be possible to replace these units with similar technology because today's compressor engines are designed to be much cleaner than engines built in the 1950's or 1960's. Other states may have a large number of old, grandfathered sources, but that is not the case in Utah. As described in the response to comment #1, modifications to these grandfathered units would likely require the installation of BACT under Utah's minor source permitting program even if the modification was not considered a major modification under the PSD program. 4) COMMENT: Given that the DC Court vacated two of the original 2002 programs (Clean Unit exemption and Pollution Control Projects) indicates that additional assurances are needed to show that the remaining programs do not increase emissions in Utah. RESPONSE: As described in the previous comments, DAQ analyzed the air quality impact due to the adoption of NSR reform in Utah, and concluded that the new applicability provisions would not increase emissions in Utah, and may actually decrease emissions due to the removal of current disincentives. This analysis did not consider the effects of the Clean Unit and Pollution Control Project exemptions because these provisions had already been vacated by the DC Court. DAQ cannot comment on how removal of these two provisions would affect the national analysis of NSR Reform, but, because these provisions were not included in Utah's analysis, the additional assurances that have been requested have already been addressed. 5) COMMENT: Given the uncertainties associated with the new rule an air quality analysis is needed to determine the impact of the new rule change on emissions in Utah. RESPONSE: It is DAQ's considered opinion that the provisions of the reform rule will not weaken the combined Federal and State NSR program in Utah. The development of the EPA's NSR rule has been a ten year process that included input from air quality experts across the country including state and local air quality agencies, advocacy groups, industry groups and the public. EPA also issued a technical analysis of the anticipated air quality impacts of the NSR rule in December of 2002 and an update in 2003. DAQ's rule development was a two year process that included five stakeholder meetings, an NSR website to present current information on the rule development and an e-mail outreach program to inform stakeholders of the latest rule changes. As described in the previous comments, UDAQ analyzed the air quality impact due to the adoption of NSR reform in Utah, and concluded that the new applicability provisions would not increase emissions in Utah, and may actually decrease emissions due to the removal of current disincentives. The reform rule was finalized December 31, 2002. Ten northeastern states filed a challenge to the rule in the Court of Appeals for the District of Columbia (DC Court). The Court issued its decision June 2005 (New York v EPA). The Court found the following reform elements to be permissible interpretations of the Clean Air Act (CAA): a) The actual to projected actual applicability test, b) the ten year look-back period for baseline actual emissions calculations, c) the use of the demand growth exclusion, d) the plant-wide applicability program, and e) the Court concluded the CAA unambiguously defines emissions increase in terms of actual emissions. The DC Court also found that all procedural challenges related to lack of notice to be without merit. Finally the Court rejected challenges to EPA's technical analysis. Based on the combined efforts of the EPA and DAQ, the Division does not anticipate negative impacts on air quality due to the NSR reform rule. DAQ does not anticipate any increase in air emissions due to the reform rule and has recommended the rule to

the Air Quality Board for approval. EPA Region VIII has indicated that they expect state agencies to either submit a reform rule revision by January 2, 2006, or demonstrate a good faith effort to develop a rule for adoption early in 2006. Region VIII has indicated that the consequences of not pursuing a reform package could include sanctions and eventually the promulgation of a Federal Implementation Plan (FIP). Based on the merits of the reform rule DAQ does not see any advantage in challenging EPA on the reform rule. 6) COMMENT: Utah's state permitting program will not ensure that emissions from major sources will not increase because Utah has exemptions that could allow modifications that escape major source NSR to also escape minor source NSR. RESPONSE: As described in the previous comments (see comment 1), UDAQ evaluated a number of different scenarios to determine whether modifications that would no longer be subject to PSD would still be reviewed under Utah's minor source program. Utah's minor source permitting program has a number of exemptions that are located in R307-401-9 through 16. Most of these exemptions, by their nature, would only apply to minor sources. The two that could possibly apply to PSD major sources are R307-401-11, Replacement-in-kind Equipment and R307-401-12, Reduction in Air Contaminants. The replacement-in-kind rule is restrictive, and has been modified to contain some of the more specific language regarding eligibility that are found in the PSD rule. DAQ has not found that this rule has been used by sources to avoid updated technology because sources have an incentive to upgrade to newer, more efficient units. In addition, older technologies are often no longer available. Sources that are decreasing emissions are exempted from Utah's minor source program under R307-401-12. As described in the response to comment #1, DAQ believes that the current requirement is acting as a disincentive for sources to install pollution controls or to increase the efficiency of older emission units. The removal of the disincentive from both the PSD program and the minor source program is more likely to decrease emissions in Utah than to increase emissions. 7) COMMENT: Utah's statewide permitting program does not require modeling for minor modifications to major sources to ensure compliance with the NAAQS, PSD increments, or protect Class I areas. RESPONSE: R307-410-3 (renumbered to R307-410-4 in the proposal) requires modeling for new or modified sources with emissions of 40 tons/yr of SO2 or NOx, 5 tons/yr of PM10 fugitive emissions, 15 tons/yr of PM10 non-fugitive emissions, 100 tons/yr CO, or 0.6 tons/yr of lead. These levels are significantly below the 250 tons/year threshold in the PSD program for determining applicability. In addition, DAQ has the ability to do modeling in-house if there is reason to suspect that a source would cause a violation of the NAAQS. R307-410 also requires modeling for hazardous air pollutants. 8) COMMENT: The recent increases in regional pollution, in Utah, including PM 2.5, and ozone as well as the introduction of more stringent PM standards by EPA in 2006 would be additional information indicating the need for a Utah specific air quality impact analysis. RESPONSE: The State of Utah adopted a SIP in 2003 to address regional haze. This SIP will ensure progress towards reducing haze that is affecting Utah's national parks. Revisions to the SIP are due in 2008 and then each 10 years after that date. The State of Utah is working with other western states to understand the regional impacts of ozone and PM2.5 and anticipates that air quality improvements on the west coast will help regional issues as well. In addition, Utah's effective minor NSR program has led to on-going emission reductions. 9) COMMENT: The new rule would allow sources to use higher baseline actual levels which will result in fewer modifications triggering major NSR review. RESPONSE: The current PSD rule allows a source to use a different baseline period if that is more representative of normal operations. The rule also encourages sources to either time their permit increases based on production levels, or to increase their emissions to increase their baseline emissions. The revised rule will remove these disincentives. Even more importantly, Utah's minor NSR program will still require modifications that are not considered "major modifications" to apply the best available control technology to the modified emissions unit. As shown in Utah's analysis of the air quality impact of adopting NSR reform, the combination of the PSD program with the minor NSR program will ensure that emissions will not increase even if sources are no longer subject to

the PSD program. 10) COMMENT: The State of Utah does not have adequate information to determine actual emissions under the ten year look back period allowed under the new baseline actual rule. The State of Utah should consider using a five year look back period rather than the ten year allowed under the new rule. RESPONSE: Under the provisions of R307-405 it is the source's responsibility to demonstrate baseline emissions. UDAQ will be able to compare this information with emissions inventory submittals in most cases and resolve any discrepancies with the source. If the source is not able to adequately demonstrate emissions for the requested baseline period then the baseline period will not be acceptable. A five-year look back period will not be any easier to demonstrate than a ten-year look back period. 11) COMMENT: Section 110(1) of the CAA mandates that EPA may not approve a revision to Utah's SIP if it would interfere with attainment of the NAAQS or with any other requirement of the CAA. Utah is obliged to conduct an analysis to ensure that any revisions to the NSR program will not adversely affect compliance with the CAA requirements. RESPONSE: The DC Court in New York v EPA reiterated its interpretation of the CCA regarding the division of responsibilities between State regulatory agencies and EPA with respect to the NSR program. The EPA is responsible for the development of NSR rules and programs and the State agencies are responsible of the implementation of the NSR program. The EPA is responsible for the development of NSR rules and therefore for complying with Section 110 of the CAA. The EPA mandate issued to State agencies to proceed with the reform rule is based on EPA's determination that the implementation of the new rule will not interfere with the requirements of the CAA. While it is not the responsibility of the State of Utah to conduct an analysis to demonstrate compliance with CAA, as directed by the Air Quality Board, the Division of Air Quality (DAQ) studied the impact of the NSR reform rule on emissions in Utah. The Division found that the new NSR program would be as effective as the existing NSR program. It is UDAQ's position that the new rule will improve the NSR program by eliminating disincentives in the existing rules that can discourage modernization of facilities while preserving the effectiveness of the NSR program (see Comment 1 and 5 above). 12) COMMENT: In the introduction to the PSD SIP it states that "In 1977, Congress added language to the Clean Air Act to prevent significant deterioration of air quality in areas where the air quality was still pristine." The word "pristine" should be changed to "unimpaired" because not all PSD areas are clean. RESPONSE: DAQ believes that the description is appropriate when describing the goals of Congress and the language has not been changed in the SIP. 13) COMMENT: EPA lacked the necessary data to undertake a meaningful environmental impact analysis. RESPONSE: The District of Columbia Court of Appeals (DC Court) reviewed the issue of the adequacy of EPA's NSR Reform rule environmental impact statement (EIS) in New York vs. EPA decided June 24, 2005. The court found that EPA in its original 2002 and the 2003 EIS documents had adequately responded to petitioner's allegations. The DC court found that that EPA's study was entitled to deference. As directed by the Air Quality Board, the Division of Air Quality (DAQ) studied the impact of the NSR reform rule on emissions in Utah and found that the new NSR program would be as effective as the existing NSR program and would eliminate disincentives in the existing NSR program that can hinder the modernization of sources (see Comment 1). 14) COMMENT: The new rule will create State enforcement problems by not requiring upfront review of applicability determinations that could later require "after the fact enforcement" actions. RESPONSE: Sources making modifications using the reform rule are required to keep records under the following three conditions: a) the source uses the actual to projected actual test and makes an estimate of future actual emissions; b) the modification will not result in a significant net emissions increase; and c) the source believes that there is a "reasonable possibility" that the modification may result in significant emissions increase. Under the existing NSR rules an applicability determination for a modification does not require any recordkeeping or reporting to regulatory agencies. The above requirements for a determination under the new rule will extend the requirements under the Federal NSR program to require both recordkeeping and reporting for applicability tests that are not significant. In the

State of Utah all applicability determinations will be reviewed under either the State or Federal NSR programs. Any source modifications that results in an emissions increase are reviewed under the State NSR program. DAQ does not anticipate that the reform rule will allow sources to undertake modification projects without agency review. 15) COMMENT: The adoption of the Reform rule will place greater burden on the DAQ to ensure compliance with the NSR requirements. RESPONSE: DAQ does not anticipate that the review of NSR permits will be significantly altered as a result of the reform rule. The existing NSR state rule requires the review of all modifications at a source that would change air emissions. The reform rule requires a State review of all source modifications that increase air emissions. DAQ does not anticipate a significant increase in permits associated with the new rule. The processing and review of a PSD source under the existing rules is a complex undertaking that has not been changed significantly. The changes to the rule will not add to the overall requirements of a PSD review. PSD sources comprise only a small percentage of the regulated sources in Utah (see Comment 1). DAQ does not anticipate that reform rule changes will alter compliance inspections at PSD sources or add to the number of required inspections. 16) COMMENT: The State of Utah is not required to submit the NSR reform rules. Under both Section 116 of the CAA and the DC Court decision (New York vs. EPA) the State could submit the current NSR program to EPA as a replacement for the NSR Reform rule. RESPONSE: A number of issues that were part of the New York v EPA court challenge were not addressed by the DC Court for lack of a factual record. One of those issues was the submittal of alternative NSR standards instead of the reform rule. UDAQ does not see any advantage to resubmitting the existing NSR rule given the rule development process and technical analysis under taken by EPA and DAQ. It is DAQ's position that the new rule will improve the NSR program by eliminating disincentives in the existing rules that can discourage modernization of facilities while preserving the effectiveness of the NSR program. To resubmit the current NSR program in place of the reform rule would place the State of Utah at risk of Region VIII sanctions for no discernable reason. 17) COMMENT: The State of Utah could adopt an alternative version of the NSR Reform rule based on the "model rule" menu of options prepared by STAPPA/ALAPCO. RESPONSE: As directed by the Air Quality Board the Division of Air Quality (DAQ) studied the impact of the NSR reform rule on emissions in Utah and found that the new NSR program would be as effective as the existing NSR program. It is DAQ's position that the new rule will improve the NSR program by eliminating disincentives in the existing rules that can discourage modernization of facilities while preserving the effectiveness of the NSR program. Given that the Reform rule will not alter the effectiveness of the NSR program and does improve the existing rule DAQ does not intent to adopt an alternative version of the reform rule. 18) COMMENT: The new rule does not require review or documentation of the actual to projected actual test. Also the DC Court remanded the record keeping provisions of the reform rule applicability test for modifications. Utah's adoption of the new rule is premature and should be postponed until EPA has responded to the DC Court. RESPONSE: Sources making modifications using the reform rule are required to keep records under the following three conditions: a) the source uses the actual to projected actual test and makes an estimate of future actual emissions; b) the modification will not result in a significant net emissions increase; c) the source believes that there is a "reasonable possibility" that the modification may result in significant emissions increase. Under the existing NSR rules, an applicability determination for a modification does not require any recordkeeping or reporting. The above requirements for a determination under the new rule extend the requirements under the Federal NSR program. In the State of Utah all applicability determinations will be reviewed under either the State or Federal NSR programs. All source modifications that result in an emissions increase are reviewed under the State NSR program. Any applicability determinations using the new actual to future actual test will have to be submitted to the State under the state NSR program. The "reasonable possibility" provision has been remanded to EPA by the DC Court for clarification. It is the position of DAQ that the NSR program can be implemented while

the EPA clarifies the "reasonable possibility" provision without altering the recordkeeping requirements of the reform rule. The remand to EPA will create an incentive for sources to maintain records for all modifications that utilize the new applicability test until the rule is clarified. 19) COMMENT: Future actual emissions are not federally enforceable limits. RESPONSE: Sources making modifications that do not result in a significant net emissions increase are required to keep records under the conditions listed above (Comment 17). When those conditions apply, sources are required to maintain records for either 5 or 10 years depending on the type of modification undertaken. The sources are also required to report to the appropriate regulatory agency emissions that are greater than the future actual emissions used in the applicability determination. No record keeping is required for source modifications that are not significant under the existing NSR rule. The requirements under the reform rule are an extension of NSR recordkeeping and reporting requirements. It is DAQ's position that the recordkeeping and reporting requirements of the reform rule with regards to applicability will be equivalent to the existing NSR program and in some case will be more stringent. 20) COMMENT: The Plant-wide Applicability Limit (PAL) provisions lack adequate recordkeeping and reporting requirements to insure compliance. RESPONSE: The Plant-wide Applicability Limit provision of the NSR Reform rule requires the following monitoring, recordkeeping and reporting: a) Emissions from all emission units at the source must be monitored on a rolling 12 month schedule; b) Source wide total emissions are reported on a rolling 12-month total for the ten year effective PAL term; c) The terms and conditions of an approved PAL become Title V applicable requirements; d) Under Title V an annual compliance certification, semi-annual monitoring and deviation reports are required; e) The PAL threshold emissions value is a federally enforceable limit specified in the PAL permit; f) The source must retain records of all required testing and monitoring data for at least five years from the date that the monitoring was done. The monitoring, record keeping and reporting requirements above are as stringent as those required for NSR major sources under the existing rule. It is the position of DAQ that the recordkeeping provisions in the PAL rule are adequate to insure compliance. 21) COMMENT: The PAL threshold limit will be inflated in two ways: the limit is calculated using the new ten year baseline actual look back period which will inflate the plant-wide threshold, and start-up and breakdown emissions can also be added to the plant-wide threshold. RESPONSE: The existing PSD rule uses a two year look back period to determine baseline actual emissions, except if a source petitions to use a baseline period that is more representative of normal operations. The two year look back can under certain circumstances create disincentives to plant modernization. The existing rule encourages sources to either time their permit increases based on production levels, or to increase their emissions to increase their baseline emissions. The revised ten year baseline rule will remove these disincentives to postpone plant modifications. To require sources to use the existing two-year look back period for the calculation of the PAL limit would build-in the current disincentives in the PAL program. The purpose of the ten year look back period is to allow the source to base applicability determination on plant conditions that are representative of the source operations. Startup and shutdown and malfunction (SSM) emissions under the new rule have to be added to both the baseline actual (current) and projected (future) actual calculations when the source is using the actual to projected actual test. The source will have to justify the use of SSM emissions as part of the projected actual emissions test. If the pre and post project SSM emissions are the same than the applicability test will not be affected. If the post project SSM emissions are greater than the pre project startup than the test results will be altered in favor of the source. In all cases the source will have to justify the estimated values for pre and post project emissions from SSM. In the case of a modernization project UDAQ would anticipate that SSM emissions would decrease and would require justification from the source if SSM were anticipated to increase. All State and Federal provisions regulating SSM have to be applied to the emissions estimates. It is DAQ's position that this provision of the new rule increases the complexity for sources and DAQ but as long as the emissions are accurate for both the pre and

post project emissions the PAL limit will not be inflated. 22) COMMENT: The PAL provisions will allow modifications to avoid NSR review. RESPONSE: The PAL threshold value is determined by adding the EPA significance level per pollutant to the actual plant-wide emissions at a source. The emissions at the source can not be increased greater than the significance level unless that increase is offset with a corresponding decrease at the source. The procedure of offsetting project emissions is called "netting". The procedure of "netting" is allowed on a per project basis under the existing rules. The PAL provision allows netting to take place under one permit and any change at a source can be implemented as long as the net change is not greater than the significance level for that pollutant. The PAL provision will not allow changes that would not be allowed under the existing NSR provisions. The Utah State NSR permitting rule is applicable to any changes at a source. Any emission increases at a source will be reviewed under the State rule even in cases where the change is exempt from Federal NSR major source review under a PAL permit. It is DAQ's position that the NSR Reform Rule will not allow modifications to avoid NSR review. 23) COMMENT: We recommend that the definition of "Air Quality Related Value" be retained because this definition is not contained in 40 CFR 52.21. RESPONSE: DAQ did not intend to delete this definition – the intention was to incorporate it by reference. Because the term is not defined in 52.21, the definition will be included in R307-405. It was previously located in R307-101, but is more appropriately located in R307-405. 24) COMMENT: In the definition of the term "Administrator" two cites to 52.21 paragraph (y) are not needed because this section "Clean Units Comparable to BACT" is not being incorporated by reference. RESPONSE: DAQ agrees and the references have been removed. 25) COMMENT: Utah has proposed to substitute the definition of major source baseline date in 52.21(b) (14) with the definition of major source baseline date that was submitted with the PM10 Maintenance Plan. DAQ revised the PM10 major source baseline date to the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005 for Davis, Salt Lake, Utah, and Weber Counties. EPA has previously stated that this definition may not be approvable into Utah's SIP because there is no provision in the CAA for using a different date if an area was in non-attainment status on January 6, 1975. If this definition is not revised, EPA may have to use the current SIP definitions of major source baseline date when acting on the SIP revision to incorporate the NSR Reform Rule. RESPONSE: The following response to EPA's concerns was prepared when the PM_{10} SIP was adopted by the Board in July, 2005. "The Clean Air Act establishes requirements for new sources in non-attainment areas in Section 173 of the Act, and requirements for new sources in attainment areas (PSD) in section 165 of the Act. However, the Act does not specifically address the transition of areas from non-attainment into the PSD program. UDAQ does not believe that the statute intended for increment consumption or expansion to occur in an area while the area was not attaining the standard. Presumably, the majority of emission reductions that occurred at major sources in non-attainment areas will be reductions required to provide for attainment in the area. To the extent that such decreases are associated with a construction activity, if we require that these be counted as part of the increment, they would actually expand increment. This would make the increment analysis in these areas a hollow requirement, because the NAAQS would be exceeded well before the increment level was reached. UDAQ believes that it is unreasonable to interpret the Clean Air Act to require such a hollow requirement. A much more reasonable interpretation is to use the date that an area is re-designated to attainment as the new starting point, and then use the PSD program as part of the overall strategy to maintain the now 'clean air' in those areas." 26) COMMENT: R307-405-18 incorporate by reference 51.166(q) (1) and (2) which provides the general public participation requirements for a SIP approved state. However, some specific public participation requirements applicable to PSD sources, such as a minimum 30-day public comment period for PSD permits, which are in the proposed R307-401-7 are not specified in 40 CFR 51.166(q). Therefore, to ensure consistency between R307-405-18 and R307-401-7 we recommend that R307-405-18 also reference, or add, the requirements for PSD sources specified

in R307-401-7. RESPONSE: A source that receives a PSD permit under R307-405 is also required to receive an approval order under R307-401. The approval order will include all of the elements of the PSD permit, and will operate as the umbrella permit that includes multiple NSR requirements. Therefore, a PSD source will receive an approval order that has undergone the public comment process outlined in R307-401-7 and the additional public comment process in 40 CFR 51.166(q) will also apply as required by R307-405-18. 27) COMMENT: The requirements in the current R307-405-7 that contains a commitment to develop a state plan if the increment has been violated appears to have been deleted. RESPONSE: The language in the current R307-405-7 has been moved to the SIP because it is a commitment by the State rather than a regulatory requirement. It can be found on page 5, section E of the PSD SIP. The State cannot regulate itself, but can make a commitment about what we will do if an increment is violated. Once this provision is in the federally-approved SIP then EPA can enforce this provision against the state. If we don't meet our commitment, then EPA can issue a SIP call requiring us to address the deficiency in our SIP. 28) COMMENT: In R307-405-19(b) the reference to 40 CFR 70.4(b)(3)(iii) is changed to R307-415-7i. The provisions do not seem to be equivalent because R307-415-7i applies only to certain permit actions in the operating permit program. RESPONSE: After reviewing the provisions, DAQ agrees with the commenter that R307-415-7i is not equivalent to 70.4(b)(3)(viii). Because this reference to Part 70 is referring to a specific provision, rather than Utah's operating permit program in general, it will be acceptable to keep the reference to Part 70 in the incorporated rule. R307-405-19(b) has been deleted from the draft rule. 29) COMMENT: The reference to Administrator in 52.21(a)(2)(iii) should be changed to executive secretary. RESPONSE: R307-405-3(2)(d)(i) changes the term "Administrator" to executive secretary throughout the rule, except for the instances listed in R307-405-3(2)(d)(ii). Because 52.21(a)(2)(iii) is not on the list of exceptions, the reference has been changed to executive secretary. 30) COMMENT: The existing language in R307-401-6 states: "The executive secretary shall issue an approval order if it is determined through plan review that the following conditions have been met," while the language proposed in the new R307-401-8 deletes "if it is determined through plan review." Currently there is a document that identifies items from the engineering review that do not appear in the Approval Order, and even with that, it's hard to understand why decisions are made. I'm concerned that such documentation will not be available in the future, if DAQ management changes its policies. RESPONSE: The language to be deleted does not govern the kind of documentation that DAQ provides. In the first place, "plan review" is an undefined term, and therefore is meaningless; currently, DAQ uses the term "engineering review," and may in the future use some other process with some other name. The end result is the same, however: the approval order is issued only if the applicant meets all the conditions specified in the rule, and the only way to show that the conditions are met is to provide documentation of the analysis and conclusions. Second, the purpose of administrative rules is for an agency to regulate entities outside itself; the rulemaking process provides an open process so that affected parties and the public can offer input. Thus it is appropriate that the rule delineates the conditions that the applicant must meet before receiving an approval order, but it is not appropriate to include in a rule a specification of the process that DAQ uses to make its determinations. Any agency's actions are regulated by a variety of statutes and rules, including the Clean Air Act and federal rules, the Utah Air Conservation Act, the state Administrative Procedures Act, and the state statute and rules governing rulemaking. If DAQ did not operate with open and transparent processes, EPA would not be able to delegate the NSR program to Utah, as DAQ could not show that the federally-required conditions have been met without documenting the review. 31) COMMENT: The current NSR rule has worked well for new source permitting but has not been as effective for permitting plant modifications. The existing rule with respect to modifications is difficult to understand and implement. PacifiCorp views the reform rule as a first step to improve the NSR program. PacifiCorp will comment on three areas of the reform rule: 1. PacifiCorp supports the use of the actual to projected actual applicability

test. Under the WEPCO rule the Federal PSD program has allowed electric utilities to use the actual test alternative since 1992. 2. PacifiCorp supports the use of the 5 year look back period to determine the baseline actual emissions at electrical generating units under the new actual to projected actual test. 3. PacifiCorp supports the Plant-wide Applicability Limit (PAL) program. The PAL program will give PacifiCorp the flexibility to implement change while installing state of the art emission controls. Mid-America's purchase of PacifiCorp includes commitments to upgrades throughout our system within the next 7-8 years; in Utah alone, we will see reductions of 60% in SO_2, 34% in NO_x, and 64% in mercury. The PAL program will help PacifiCorp to efficiently complete plant modifications while maintaining air quality. RESPONSE: Noted. 32) COMMENT: PacifiCorp finds the existing NSR rule to be difficult to understand and susceptible to multiple interpretations. The adoption of the reform rule is the first step in a process to improve the NSR program. RESPONSE: Noted. 33) COMMENT: The PAL program will allow sources with multiple emission units to establish a plant-wide emission limit for a particular emissions category rather than being required to manage individual emission limits at multiple units at a plant. This simplified approach to emission limits continues to protect the environment by ensuring that future emissions do not increase, while allowing operational flexibility at the plant. RESPONSE: Noted. 34) COMMENT: PacifiCorp also notes its disagreement with the comment letter dated October 31, 2005 and submitted to the Air Quality Board on behalf of various organizations and individuals in opposition to the reform. The intent of the letter was to stop the rule making process from advancing, which PacifiCorp views as a counter productive approach to the reform of the NSR program. Many of the claims in the letter have already been addressed in the Federal and State rulemaking process to date. RESPONSE: Noted.

R307. Environmental Quality, Air Quality.
R307-405. Permits: Major Sources in Attainment or Unclassified Areas(PSD).
R307-405-1. Purpose.

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were stayed by the DC Circuit Court of Appeals on December 23, 2003, pending appeal. This rule does not include the clean unit and pollution control project provisions that were vacated by the DC Circuit Court of Appeals on June 24, 2005. This rule supplements, but does not replace, the permitting requirements of R307-401.

R307-405-2. Applicability.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(a)(2), effective March 3, 2003, are hereby incorporated by reference.

(2)(a) The provisions in 40 CFR 52.21(a)(2)(iv)(e) are not incorporated by reference.

(b) The last sentence in 40 CFR 52.21(a)(2)(iv)(f) is not incorporated by reference.

(c) The provisions in 40 CFR 52.21(a)(2)(vi) are not incorporated by reference.

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

R307-405-3. Definitions.

(1) Except as provided in (2)below, the definitions contained in 40 CFR 52.21(b), effective March 3, 2003, are hereby incorporated by reference.

(2) "Air Quality Related Values," as used in analyses under 40 CFR 52.21(p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(3)(a)(i) "Major Source Baseline Date" means:

(A) in the case of particulate matter:

(I) for Davis, Salt Lake, Utah and Weber Counties, the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005;

(II) for all other areas of the State, January 6, 1975;

(B) in the case of sulfur dioxide:

(I) for Salt Lake County, the date that EPA approves the sulfur dioxide maintenance plan that was adopted by the Board on January 5, 2005;

(II) for all other areas of the State, January 6, 1975; and

(C) in the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor Source Baseline Date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or R307-405 submits a complete application under the relevant regulations. The trigger date is:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(B) in the case of nitrogen dioxide, February 8, 1988.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R307-405; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary shall rescind a minor source baseline date where it can be shown, to the satisfaction of the executive secretary, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM10 emissions.

(b) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(c) "Reviewing Authority" means the executive secretary.

(d)(i) The term "Administrator" shall be changed to "executive secretary" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

(A) 40 CFR 52.21(b)(17),
(B) 40 CFR 52.21(b)(37)(i),
(C) 40 CFR 52.21(b)(43),
(D) 40 CFR 52.21(b)(48)(ii)(c),
(E) 40 CFR 52.21(b)(50)(i),
(F) 40 CFR 52.21(l)(2),
(G) 40 CFR 52.21(p)(2), and
(H) 40 CFR 51.166(q)(2)(iv).

(e) The definition of "emissions unit" in 40 CFR 52.21(b)(7), effective January 6, 2004, is hereby incorporated by reference.

(f) The definition of "replacement unit" in 40 CFR 52.21(b)(33), effective January 6, 2004, is hereby incorporated by reference.

(g) The following paragraphs that refer to clean units and pollution control projects are not incorporated by reference:

(i) 40 CFR 52.21(b)(2)(iii)(h),

(ii) 40 CFR 52.21(b)(3)(iii)(b),

(iii) 40 CFR 52.21(b)(3)(vi)(d),

(iv) 40 CFR 52.21(b)(32), and

(v) 40 CFR 52.21(b)(42).

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g).

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

R307-405-4. Area Designations.

(1) Pursuant to section 162(a) of the federal Clean Air Act, the following areas are designated as mandatory Class I areas:

(a) Arches National Park,

(b) Bryce Canyon National Park,

(c) Canyonlands National Park,

(d) Capitol Reef National Park, and

(e) Zion National Park.

(2) Pursuant to section 162(b) of the federal Clean Air Act, all other areas in Utah are designated as Class II unless designated as nonattainment areas.

(3) No areas in Utah are designated as Class III.

R307-405-5. Area Redesignation.

Any person may petition the Board to change the classification of an area designated under R307-405-4, except for mandatory Class I areas designated under R307-405-4(1).

(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.

(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g).

R307-405-6. Ambient Air Increments.

The provisions of 40 CFR 52.21(c), effective March 3, 2003, are hereby incorporated by reference.

R307-405-7. Ambient Air Ceilings.

The provisions of 40 CFR 52.21(d), effective March 3, 2003, are hereby incorporated by reference.

R307-405-8. Exclusions from Increment Consumption.

(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen dioxides from stationary sources which are affected by plan revisions approved by the EPA Administrator as meeting the criteria specified in 40 CFR 51.166(f)(4). The temporary increase shall not exceed 2 years in duration unless a longer time is approved by the EPA Administrator. This exclusion is not renewable.

(2) No exclusion of concentration under (1)(a) or (b) above shall apply more than five years after the effective date of the order to which paragraph (1)(a) refers or the plan to which paragraph (1)(b) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under (1)(e) shall apply to an emission increase from a stationary source which would:

(a) impact a Class I area or an area where an applicable increment is known to be violated; or

(b) cause or contribute to a violation of the national ambient air quality standards.

R307-405-9. Stack Heights.

The provisions of 40 CFR 52.21(h), effective March 3, 2003, are hereby incorporated by reference.

R307-405-10. Exemptions.

(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii), effective March 3, 2003, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(i)(2) through (5), effective March 3, 2003, are hereby incorporated by reference.

R307-405-11 Control Technology Review.

The provisions of 40 CFR 52.21(j), effective March 3, 2003, are hereby incorporated by reference.

R307-405-12. Source Impact Analysis.

The provisions of 40 CFR 52.21(k), effective March 3, 2003, are hereby incorporated by reference.

R307-405-13. Air Quality Models.

The provisions of 40 CFR 52.21(l), effective March 3, 2003, are hereby incorporated by reference.

R307-405-14. Air Quality Analysis.

(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii), effective March 3, 2003, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(m)(2) and (3), effective March 3, 2003, are hereby incorporated by reference.

R307-405-15. Source Information.

The provisions of 40 CFR 52.21(n), effective March 3, 2003, are hereby incorporated by reference.

R307-405-16. Additional Impact Analysis.

The provisions of 40 CFR 52.21(o), effective March 3, 2003, are hereby incorporated by reference.

R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.

(1) The provisions of 40 CFR 52.21(p), effective March 3, 2003, are hereby incorporated by reference.

(2) The executive secretary will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

R307-405-18. Public Participation.

(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2), effective March 3, 2003, are hereby incorporated by reference.

(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

R307-405-19. Source Obligation.

(1) Except as provided in (2) below, the provisions of 40 CFR 52.21(r), effective March 3, 2003, are hereby incorporated by reference.

(2) The parenthetical phrase in the first sentence in 40 CFR 52.21(r)(6) shall be changed to read "(other than projects at a source with a PAL)."

R307-405-20. Innovative Control Technology.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(v), effective March 3, 2003, are hereby incorporated by reference.

(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".

(b) 40 CFR 52.21(v)(2) shall be changed to read "The executive secretary shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

R307-405-21. Actuals PALs.

(1) Except as provided in (3), the provisions of 40 CFR 52.21(aa)(1) through (5) and (7) through (15), effective March 3, 2003, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(aa)(6), effective January 6, 2004, are hereby incorporated by reference.

(3)(a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to "the effective date of this rule".

R307-405-22. Banking of Emission Offset Credit in PSD Areas.

Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the executive secretary must identify them in either the Utah SIP or an order. The executive secretary will provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

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